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No. 06-360

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO THE OPPOSITION OF RESPONDENT KEENAN & ASSOCIATES

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PETITIONER'S RESPONSES TO RESPONDENT KEENAN'S FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by Respondent Keenan's opposition may appear in Petitioner's replies to the two other oppositions.

I. There is incontrovertible evidence that certain defendants were deemed by the trial court to have been dismissed from the case.

Petitioner had received from the Superior Court a Notice of Status Conference dated May 1, 2002, which contained the following line printed in caps: "NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED." (1 E033583 CT 219.) Petitioner thereupon called the clerk's office to ascertain the address(es) used by the Superior Court to notify the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues. Petitioner was informed by the clerk of the Superior Court that the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues were listed as having been dismissed and that said defendants, therefore, had not been noticed. The record shows that, from that point forward, Petitioner insisted on exercising his right to proceed against the defendants whom the trial court deemed to be dismissed from the case. (Pet.App., pp. 52-56.) It is an absolute distortion of the truth for Respondent Keenan to state that Petitioner "had some confusion in his mind as to who the parties were to the litigation." (Keenan Opp., p. 3.)

Moreover, the appellate order does *not* state, as Keenan would have us believe, that the individuals in

question were never deemed *by the trial court* to have been dismissed from the case. The appellate court's order of July 25, 2002, states that "the remittitur *need not be recalled* as requested by appellant to clarify that all such District officials and board members may no longer be considered dismissed from the case, *because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law*." (Pet.App. at 120; emphases are added.) In making that statement, the appellate order of July 25, 2002, was rectifying the trial court's error. Thus, the appellate order of July 25, 2002, operated as an order reinstating the defendants whom the trial court had deemed dismissed.

In arguing that the District Defendants who were subject to the original appeal were never missing, Keenan and District Defendants got tangled up in their own falsehoods and completely forgot about the incriminating evidence that District Defendants' attorneys themselves had provided earlier. Indeed, in papers filed on July 8, 2002, counsel for District Defendants listed as their clients only a fraction of the District Defendants who were subject to the original appeal (*cf.*, Pet.App. at 99 and 101), and claimed in those same papers (*cf.*, Pet.App. at 100) that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action."

II. There is incontrovertible evidence that Dennis Walsh did not represent the full complement of District Defendants throughout the post-appellate process.

On page 3 of its opposition to the instant petition, Respondent Keenan states: "As the [appellate] order [of July25, 2002] pointed out, all of the district defendants had been represented by Dennis Walsh throughout the appellate *and post-appellate* process." (Emphasis is added.) The appellate order did not say that at all. What the appellate

order said was that "the individual defendants listed in the September 5, 1996, dismissal order *were represented* [emphasis on past tense] by Mr. Walsh and his firm *throughout the appellate proceedings.*" (Pet.App. at 120; emphasis is added.) The appellate order makes no statement with regard to representation on remand to the trial court.

If it is true that Dennis Walsh had represented all District Defendants "throughout the appellate and post-appellate process," then why did Dennis Walsh file substitutions of attorney for some, but not all, of the District Defendants? The attorneys for District Defendants avoid addressing this question in their opposition to the instant petition. They merely state on pages 4-5 that "District Respondents' demurrer and motion to strike papers, filed on August 16, 2002, "clearly identified the District Official defendants as being represented by counsel." However, in papers filed on July 8, 2002, counsel for District Defendants listed as their clients only a fraction of the District Defendants who were subject to the original appeal (*cf.*, Pet.App. at 99 and 101), and claimed in those same papers (*cf.*, Pet.App. at 100) that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action."

III. Prior to the reinstatement of the "missing" defendants, Petitioner's memorandum of costs on appeal was vulnerable to certain attack.

The record is replete with evidence that it would have been *futile* for Petitioner to submit a memorandum of costs earlier than he did; for, the trial court was adamant about deeming the "missing" individuals as dismissed from the case; and if Petitioner had attempted to submit a memorandum of costs on appeal before these "missing" defendants were reinstated, Petitioner would have come under attack for having "improperly claimed costs as to

parties against whom he did not prevail on appeal" as State Respondents themselves later argued (*cf.*, State Respondents' Appellate Reply Brief, p. 15). Thus, Respondent Keenan was incorrect when it stated, on page 3 of its opposition, that "[t]here is nothing to have prevented [Petitioner] from filing his Memorandum of Costs on Appeal as to District Defendants or any other defendants."

IV. It became quite apparent, from the tenor of the appellate proceedings, that oral argument would be but an exercise in futility.

Respondent Keenan's statements regarding oral argument (*cf.*, Keenan's Opp., p. 5) do not present the facts fully. In his letter to the appellate court, filed on March 3, 2006, Petitioner noted that the appellate court had not addressed his *alternative* request for leave to submit a supplemental brief. "Presumably," the letter states, "the Court's silence on the matter indicates the Court's reluctance to grant such leave." Petitioner therefore informed the appellate court that, based upon the appellate court's apparent reluctance to grant such leave, he would respectfully decline to appear for oral argument. The reasons, he said, are simple:

> "The results of a white paper, presently being reviewed by individuals of diverse backgrounds, show that the tentative opinion is so fundamentally flawed as to require a complete and extensive re-analysis of the appeal. To demonstrate this to the panel, I would have to make more than 50 references to the record and the panel's tentative opinion. That would take considerably more time than has been allotted to me by this Court. Moreover, the tenor of the tentative opinion suggests that the panel may not be as receptive to criticism from me [a non-lawyer] as it needs to be. Thus, my appearance would serve no purpose but to irritate the members of the panel, and I

> have no interest in doing that. In short, all of these factors taken together would reduce my appearance to an exercise in futility."

The letter ends with Petitioner's statement that his absence at oral argument "is not to be construed as a concession on the issues."

The appellate court could have responded to Petitioner's letter of March 3, 2006, by granting the parties leave to submit supplemental briefs. The appellate court, however, chose not to do so. Instead, the appellate court issued an order dated March 6, 2006, in which the appellate court deemed Petitioner's letter a waiver of oral argument and, on that basis, ordered the matter off calendar and declared that "[t]he cause stands submitted."

V. It is well established that issues embraced in an appeal fall outside of the jurisdiction of a trial court and cannot be adjudicated, pending the appeal.

Trial court proceedings were stayed, pending Petitioner's request for review by the California Supreme Court. It is respondents' burden to show why what applies to the filing of a petition to the California Supreme Court does not apply to the filing of a petition to the U.S. Supreme Court. Respondents, however, make no such showing in their oppositions.

Since the filing of Petitioner's instant petition to the U.S. Supreme Court, the U.S. Bankruptcy Court for the Central District of California has regularly continued its hearings in the adversary proceedings brought by Petitioner against Respondent Mason, pending Petitioner's instant petition to the U.S. Supreme Court. (*In Re Roy and Debra Mason*, RS 03-16638 DN; *Vasek v. Debtor Mason*, Adv. RS

03-1514). Indeed, it is a well established principle of law that issues embraced in an appeal fall outside the jurisdiction of a trial court and cannot be adjudicated, pending the appeal. If further authority is needed to clarify that this principle applies to petitions to the U.S. Supreme Court as well, then this Supreme Court should grant the instant petition to address the matter.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

Respectfully submitted,

Anthony G. Vasek
Petitioner In Propria Persona